



United States Department of the Interior
BUREAU OF LAND MANAGEMENT

Washington, D.C. 20240

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DECISION MEMORANDUM FOR THE SECRETARY

FROM: Mike Pool, Acting Director

SUBJECT: Proposed Final 2012 Secretary's Order on Oil and Gas and Potash Development
Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

I. INTRODUCTION

The Bureau of Land Management (BLM) has prepared a proposed final "Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico."

The proposed final 2012 Secretary's Order would supersede the current Secretary's Order that addresses management of the oil and gas and potash resources in the designated area. The revisions in the new Order are designed to promote the efficient development of potash, oil, and gas resources, while minimizing conflict between the industries and ensuring the safety of operations. Industry representatives from leading oil and gas and potash interests have been working together to identify and propose an acceptable path forward. The opportunity to finalize a Secretary's Order that has the potential support of both industries is historic, particularly in light of the long and contentious history of the area.

The proposed Secretary's Order was made available for public comment from July 13 to August 31, 2012. The BLM received 28 comment letters that contained 41 distinct comments on the proposed Order. After careful analysis of these comments, the BLM made several changes to the proposed Order and prepared the proposed final 2012 Secretary's Order.

The BLM also conducted government-to-government tribal consultation meetings with seven tribes beginning on July 17; none of the tribes expressed any adverse opinions about the proposed Order.

II. BACKGROUND

Potash is a potassium-bearing mineral used primarily for fertilizer. The Carlsbad Mining District has a unique geology that contains potash, oil, and gas deposits. Oil and gas is found in formations below the potash-bearing formations, so oil and gas wells must be drilled through the potash formations. If a well casing fails, gas could enter the mine workings and endanger miners. The potential for such a breach also could increase potash operating costs because enhanced ventilation and specialized equipment would be needed before mining could continue. These conflicts have led to litigation; numerous cases have been appealed to the Interior Board of Land Appeals and to federal court.

While there has been a long history of litigation, substantial mineral development has occurred in the past, as evidenced by the fact that a total of 4,959 wells (approximately 2,295 active oil wells, 577 active gas wells, 33 water injection wells, and 2,054 dry holes and abandoned wells) are currently located within the area covered by the Order. Historically, there have been seven major potash mining operations in this area with thousands of miles of interconnected underground mine workings. Currently, two companies operate four potash mines in the area. In addition, about 2,500 potash core holes have been drilled within the area.

The Designated Potash Area (DPA) was established by a Secretary's Order in 1939, which originally withdrew approximately 43,000 acres from oil and gas leasing and development to protect potash deposits. Exploration by several companies continued after 1939 and the potash area was expanded by a 1951 Order, which lifted the withdrawal and authorized concurrent development by the oil and gas and potash industries. To achieve concurrent development, the 1951 Order, and later Orders in 1965, 1975, and 1986, imposed protective stipulations in new leases issued for both oil and gas and potash, to avoid conflicts as much as possible. The DPA currently covers a total area of approximately 497,002 acres and includes 350,617 acres of BLM-managed land where leasing of oil and gas and potash occurs.

In 2011, potash and oil and gas companies formed a Joint Industry Technical Committee (JITC) with the objective to "establish how both Potash Mining and Oil and Gas Production will operate when their activities are in close proximity so as to allow safe, concurrent development of both minerals." The JITC formulated a consensus document to recommend a new method for the BLM's management of orderly concurrent development of oil and gas and potash within the DPA. The proposed 2012 Secretary's Order is consistent with the principles set forth in the consensus document.

In developing the proposed final 2012 Secretary's Order, the BLM prepared an environmental assessment (EA) under the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq. In this EA the BLM determined that the 2012 Secretary's Order would be consistent with the land use plans for the DPA. The EA evaluated the potential environmental effects of continuing to operate under the 1986 Secretary's Order (the No Action Alternative) and operating under the 2012 Secretary's Order (the Proposed Action). The EA noted that any surface disturbing activities approved under the procedures of either the 1986 Secretary's Order or the 2012 Secretary's Order would be subject to further site-specific evaluation under NEPA, but determined that the new emphasis on Development Areas, Drilling Islands, and unitization of oil and gas development would tend to focus the surface activities of oil and gas development in certain areas, consolidate facilities, and reduce the amount of acreage required for access routes. This would have a beneficial effect on the natural environment.

As discussed in the EA, the overall environmental effect of the proposed revision would result from focusing surface activities within designated Development Areas and Drilling Islands. While the intensity of surface use in these Drilling Islands would be greater than that associated with an individual well pad or typical lease operation, there are several environmental benefits that can be realized through opportunities for centralized facilities. In addition, the focus on unitization and development of units primarily through horizontal drilling could ultimately reduce the number of oil and gas surface locations within the DPA. Consolidating activities in Drilling Islands may reduce habitat fragmentation and reduce impacts to potash resources by preventing undue waste due to reducing the areas requiring safety Buffer Zones for mining activities. In addition, wells currently producing outside of Development Areas and Drilling

Islands would be allowed to produce until they are no longer serviceable. After production is complete these well locations would be reclaimed. Over time, the result would be a reduction in scattered or dispersed wells. Therefore, the overall surface disturbance acreage and habitat fragmentation impacts should be less through the use of the Development Area and Drilling Island concepts.

Based on the analysis in the EA, the BLM has evaluated whether approval of the proposed final 2012 Secretary's Order could result in a significant adverse impact to the human environment. For the reasons noted above, the EA shows that there would not be any significantly adverse impacts to the human environment from approving the proposed final Order. To the contrary, the impact of mineral development (which would be subject to additional NEPA review) is expected to be reduced under the proposed final 2012 Secretary's Order because of the consolidation of surface activities and better coordination between the oil and gas and potash industries.

III. SUMMARY OF PROPOSED ORDER

Under the proposed final 2012 Secretary's Order, the BLM would manage the DPA under a plan of co-development, mostly through the establishment of Development Areas with associated Drilling Islands. The BLM believes that the proposed final Order provides tools that would lead to more effective management of the DPA. In particular, the proposed final Order would lead to more careful development of oil and gas resources from Drilling Islands. The proposed final 2012 Secretary's Order should also lead to enhanced conservation of potash resources.

The proposed final Order would introduce the term "co-development," defined as the concurrent development of oil and gas and potash resources in the DPA in the context of a cooperative effort between industries under the guidelines of the Order. Under the new Order, the BLM would establish "Development Areas" where oil and gas wells could be drilled from one or more "Drilling Islands." The Drilling Island concept was first introduced in the 1975 Secretary's Order. In most cases, a single Drilling Island would be established for each Development Area, but if circumstances so dictated, the BLM could establish additional Drilling Islands. Drilling Islands would be situated in such a manner that extended reach horizontal wells could access oil and gas within the associated Development Area. Emerging technologies associated with horizontal drilling and production allow for the oil and gas industry to develop these resources in a manner that has less impact on potash resources and the environment, in some cases allowing the bottom hole location to be safely located below measured potash reserves.

The BLM expects that expanding the use of Drilling Islands and designating Development Areas that encompass many different leases over large areas would result in a greater recovery of potash and oil and gas resources. In addition, under the proposed final 2012 Secretary's Order, the BLM could authorize drilling from areas proven to be barren of potash or, in the BLM's sole discretion, from a single well site or a Drilling Island outside of a Development Area that was jointly recommended to the BLM by the oil and gas lessee and the nearest potash lessee.

Historically, the BLM managed one Application for Permit to Drill (APD) at a time and few horizontal or directional wells were developed. Under the proposed final 2012 Secretary's Order, the BLM would still review each APD for approval. However, any APD decisions would be informed by and incorporate analysis and factual information developed by the BLM in the agency's review of plans for Development Areas. Most drilling would occur from Drilling

Islands within an associated Development Area. The number of wells on each Drilling Island would vary. It is reasonable to expect that some Drilling Islands would accommodate only 15 to 50 wells while others could support 150 wells or more.

The BLM envisions that, under the proposed final 2012 Secretary's Order, the oil and gas leases in a Development Area would be unitized and developed by a unit operator, or operated under a communitization agreement. This should lead to more orderly development of the oil and gas resources in the Development Area and minimize impacts to surface resources due to a reduction in the number of drill pads and associated roads, power lines, and other ancillary facilities. Moreover, the resulting reduction in the number and spacing of oil and gas drilling locations where wells penetrate the potash formation is expected to minimize impacts to potash resources and enhance the safety of underground potash miners. This would also allow some currently inaccessible oil and gas leases to be taken out of suspension and put into production.

The proposed final 2012 Secretary's Order would retain several important features of the 1986 Order, including the boundaries of the DPA established in the 1986 Order, as corrected in 1987. The new Order would also retain the language of the 1986 Order for stipulations for oil and gas leases and potash leases issued, reinstated, renewed, or readjusted in the DPA.

IV. POSITIONS OF COMMENTING PARTIES

The JITC is composed of a number of oil and gas companies and potash companies, along with Sandia National Laboratories. The potash company members of the JITC hold all of the potash leases in the DPA. The oil and gas company members of the JITC are responsible for approximately 85% of the oil and gas production in the DPA. All but one JITC member (OXY) signed a consensus document in April 2012 containing a general outline for a proposed management plan for the DPA. The proposed final 2012 Secretary's Order is consistent with the key concepts suggested by the JITC. While one JITC member (Yates Petroleum) later submitted comments criticizing the proposed Order, the other members of the JITC (including OXY) proposed very few edits to the proposed Order, most of which have been incorporated into this proposed final Order.

The companies representing the remaining 15% of oil and gas production in the DPA have declined to participate in the JITC. Some of these companies (who in total account for approximately 3% of the oil and gas produced in the DPA) commented that the proposed Order would adversely affect the oil and gas industry. The BLM expects that the proposed revision would benefit the overall economic outlook for both industries and give access to leases that cannot be developed under the 1986 Order. The BLM is committed to working with all lessees in implementing the proposed final 2012 Secretary's Order, if it is approved.

New Mexico Governor Susana Martinez and staff for Senators Bingaman and Udall and Representative Pearce have been briefed by the BLM and the JITC on the possibility of a new 2012 Secretary's Order. Industry has briefed Texas Senators Hutchinson and Cornyn and reports that the two Texas Senators are supportive of the JITC recommendations. Tom Bemis, New Mexico Cabinet Secretary for Energy, Minerals, and Natural Resources, and Ray Powell, New Mexico State Land Office Commissioner, have also been briefed by the JITC on the consensus that it reached. The New Mexico Oil Conservation Division (NMOCD) commented on the proposed Order that the language in one section potentially could cause conflict due to differences between NMOCD and BLM regulatory frameworks. The BLM adopted a change to

the proposed final 2012 Secretary's Order that addresses this concern. Eddy, Lea, and Chaves Counties submitted comments expressing concern that the proposed Order was in essence a withdrawal of the entire DPA from concurrent development and requesting coordination with local governments. The BLM has met with the Eddy and Lea County commissions to discuss the proposed final 2012 Secretary's Order to further explain how the BLM would approach the implementation of the 2012 Secretary's Order. The county commissioners with whom the BLM met indicated that these meetings aided their understanding of how the BLM would manage the development of both resources in the DPA.

The BLM's Carlsbad Field Office consulted with seven federally recognized tribes that have interests within the DPA in June, July, and August of 2012. The BLM made initial contact with tribes in the form of a letter informing them of the proposed revision and soliciting their concerns and input. The BLM sent a second letter, which included a copy of the draft revision to the 1986 Secretary's Order, to the tribes on July 9, 2012, and held face-to-face meetings with the various tribes in July and August 2012. The BLM arranged these meetings to discuss the proposed revision of the 1986 Secretary's Potash Order and other projects. The tribes did not express any adverse opinions regarding the substance of the proposed Order, but were very concerned that the BLM continue to follow the Native American Graves Protection and Repatriation Act (NAGPRA) and immediately notify the tribes if any human remains and associated funerary items are discovered. The proposed final 2012 Secretary's Order would not affect the BLM's continuing commitment to fulfill its responsibilities under NAGPRA. The tribes did not identify any areas of traditional cultural importance within the DPA.

V. RECOMMENDATION

I recommend that you approve the proposed final 2012 Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico.

VI. DECISION BY THE SECRETARY

I have decided to issue the proposed final 2012 Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

Dated: December 3, 2012

Ken Salazar
Ken Salazar

CC: David Hayes, Deputy Secretary
Hilary C. Tompkins, Solicitor
Marcilynn Burke, Acting Assistant Secretary, Land and Minerals Management